

THE WILMINGTON JOURNAL

WILMINGTON, N. C.

SATURDAY, JULY 23, 1869.

The Pittsburgh Commercial, the leading Republican journal in Western Pennsylvania, pays the following justly merited compliment to Hon. Asa Packer, the Democratic candidate for Governor of that State:

"The Democratic candidate for Governor is a gentleman of irreproachable private character, in whom his attached friends feel a honest pride. He has amassed great wealth by successful business ventures, and in the disbursement of it to educational and benevolent purposes has manifested the utmost liberality. Mr. Packer, as a man, therefore, will receive no but kind words from us during the canvass, and we see no prominent reason for indulging in severe criticism."

North Carolinians in California.

We are pleased to learn that the families originally from North Carolina—among whom was Mr. Sam'l Holmes, formerly from this county—who left Mississippi and settled in California last year, are meeting with the most abundant success. They are now harvesting their crops, which they write are beyond even their most sanguine anticipations.

Mechanical Triumph.

The triumphs of mechanical science and ingenuity are daily assuming more and more wonderful proportions, and are now applied to almost every exigency of every day life. A truly magnificent illustration of this was given on the Missouri Pacific Railroad on last Sunday, when the gauge of that road, for its entire length—three hundred and eight miles—was changed, in sixteen hours, from the broad to the narrow gauge. Thirteen hundred and fifty men were employed on the work. A complete stock of three hundred and fifty cars, and forty six new locomotives were in readiness, and on Monday the business of the road was carried on without interruption.

General Canby.

As the Raleigh Standard has lately resolved itself into such an enthusiastic Conservative, will it please inform some of its anxious friends what it now thinks of its own wholeness, the immortal General E. R. Canby, under whose wise administration of affairs North Carolina was allowed to creep back into the fellowship of the Union? The Standard had kicked Canby then; what does it think of his present course towards the Conservative Republicans of Virginia, of which the Standard considers an honored member? What does it think of Canby, and what it will do about him?

The Chinese Question.

Numbers of the press of this country are becoming greatly startled at the idea of introducing Chinese labor into the South, and a hue and cry has already been raised against those who propose to do so. It is asserted that all of the old time organizations of labor will be broken up, and that the artisans and mechanics of the country, as well as the laboring classes, cannot live upon the low wages for which a Coolie will work.

There is much truth in this, and much that is worthy of a careful consideration. Our people cannot weigh too carefully the many disadvantages as well as benefits that will accrue to them by the introduction of Chinese labor. But if the experiment is to be made at all, it should be altogether an experiment, until it is ascertained, beyond a doubt, that the permanent institutions of this country will not suffer by the innovation.

On the other hand, it can well be urged that the fertile lands of the South are extensive enough for all, and that the greater amount of labor so will there be the greater amount of production; that we can easily find employment here for one hundred millions of Coolie laborers, entirely outside of the limits of the cities and towns, and that more important than all, "labor is bound to regulate itself." We need this new labor, and if it can be obtained without necessitating the overthrow of any of our old established systems, let us have it, say we.

Virginia and North Carolina.

At the reception of Governor Walker, of Virginia, at his native town of Dinwiddie, N. Y., on the 15th instant, he remarked, among other things:

"The late issue was not so much a contest as to whether Republican or Democratic sentiment should prevail in the State, but the issue was whether the virtue, property and intelligence of the State should control it, or that the organized ignorance and poverty should manage it. The virtue and property and intelligence have triumphed."

We have had the Richmond Whig, the asserted organ of Governor Walker, quoted to us and we now give the Governor's own words in reply. Precisely the contrary of the above may be said of the election in this State, and if the "virtue, and property and intelligence" of Virginia were triumphant, the vice, poverty and ignorance of North Carolina carried the day by its numerical strength, for it is a notorious fact that nine-tenths of the offices in this State are filled either by needy adventurers or by ignorant negroes. The scenes in the Capitol at Raleigh, during the sessions of the Convention and the Legislature, are sufficient evidence of this, to say nothing of all that needs the eye in almost every petty county and municipal office throughout the State. Every election which occurs now, to fill a vacancy, bears also a confirmation of this fact; witness, among others, the present contest in this county for Legislative honors between two Radical candidates of the Raleigh Standard persuasion—one of whom is an ignorant negro and the other a Confederate deserter.

The Wilmington Journal is the only paper which has had the effrontery to deny that the Virginia election is a Republican triumph. It has attempted to deny that the Walker men are Republicans.—Raleigh Standard.

As is habitual with that sheet, the Standard flies the track of argument, and, with its usual disregard to truth, has erected us with an assertion that we have never made. The party that elected Walker, and Walker himself, fought and conquered under the name and the banner of Conservative Republicans, and were not more allied with the Red-String Radical Republican party who now lord it in this State than water can now lord it to affiliate with fire. The party against whom these Conservative Republicans strove were not

Democrats, but they called themselves the Republican party of Virginia, and as such were fully accredited, either positively or implicitly, by the leading Republican papers of the party. The defeated candidate, Wells, also claimed, and was accorded, a full fellowship with the Radical Republicans of the State and county, and had he been elected, none would have been more fulsome in their praises than the Standard, which has now made the wonderful discovery that it always has been of the moderate Republican stripe.

If the members of the Standard party in this State were, as a general thing, sufficiently intelligent to understand the matter, it would be considered an insult to them for the Standard to thus veer so suddenly and so completely around to the opposite side of the compass. Its present editor (the ex-Democrat from Maine) may be sincere in his professions and may be guided in this by some of his earlier party principles; and perhaps, too, he is not so much of an apostate after all. Carpet-bag Republicans in the South, it is well known, are renegades from all sorts of political opinions, and easily adopt just such as will pay well. A renegade Democrat in a Republican office is now as contemptible and disgusting a something to us as was at one time a deserter from the Southern army, in the Federal ranks.

Surely, the recently imported editor of the Standard is not fully aware of the course which that paper has always pursued under his many predecessors, nor how, with such editors as Holden, Sr. and Jr., Chaplain Papper, Pilgrim Ashley, the infamous Paige, Littlefield, et al., it has pursued—almost uniformly—a line of policy that has been infamous in the extreme. It has never enunciated a doctrine that was not decidedly radical, and its articles have been such, on some occasions, as would shame even old Brownlow himself. It has encouraged corruption in every shape, and has never hesitated to endorse even the most infamous measures of the most infamous members of its infamous party. It had the honor of publishing, as an editorial, the article headed "Wink," which caused such a burst of indignation throughout the State, and was a warm supporter of that most villainous measure of the present Legislature, the organization of the North Carolina Detailed Militia.

This newly fledged editor of the Standard certainly betrays a great ignorance of the character of Gov. Holden, of the reputation of his paper, and of the principles and aims of his party, if he is sincere in his claim to be a Conservative Republican. Go to work, Mr. Pike, and study the record of your predecessors: take down your files for the past two years and read there all that ill-drawn editors have enunciated, and then, if you still wish to be reckoned as a Virginia Republican, burn up your old files, wash your type, and your hands, and your pen, and then holdly come out before the world and acknowledge past errors, beg for indulgence in the future, and do as Governor Walker has done—damn the carpet-baggers.

The Suez Canal.

The two great triumphs of the year are the construction of the Pacific Railroad and the opening of the Suez Canal. The former stands as a monument of the energy and enterprise of the American people; while the latter gives evidence that there is some life in the old world yet.

The Suez Canal, although not yet finished, is very nearly so, and the 17th day of November next has been set apart as the time when it will be completed, and when the opening of this great work is to be inaugurated. The enterprise is of French origin and has been carried on under the direction of M. de Lesseps, a French engineer of great reputation.

These two works—the Suez Canal and the Pacific Railroad—are destined to work more changes in both hemispheres than are even dreamed of now. They not only pave the way to a freer intercourse between the nations of the east and those of the west, for the benefit of commercial relations, but they will eventually revolutionize the habits of life, methods of education, and even the religion of the Mohammedans and Pagans of the east. They will bring to England and France, and to the shores of America, the rich products of the oriental climes, and we will send them in return not only the results of the mechanical science and ingenuity of our greatest mechanics, but travelers and missionaries, and perhaps colonies of actual settlers, who will carry with them the Bible instead of the sword, and who will introduce everywhere the religion of the only true God, until the uttermost parts of the earth shall hear and believe in the glad tidings of salvation.

These ideas may yet be ranked as dreams—almost as vagaries—but yet we are fully justified in believing that the accomplishment of all such is in the near future, and that the greater the facilities for intercourse between the eastern and the western world, so much more rapidly will truth, enlightenment, education and religion be spread through the now dark region of the earth.

[COMMUNICATED.]

Agricultural Resources of the Cape Fear.

Letter from the State Geologist.

It is known that our State Geologist is now giving attention to the marls and soils of the Cape Fear region. The following communication from this State officer, whose public duties involve matters of immediate and great practical importance to our people, will be read with much interest. We but express the feelings and wishes of every intelligent man and woman throughout the vast and fertile region of the whole Cape Fear country, when we say to Governor Holden and Professor Kerr, that our people of all classes, colors, and parties, are extremely anxious that the Professor should resume his labors here as early as practicable, and continue them as long as possible:

RALEIGH, N. C., July 15th, 1869.

To Dr. S. S. Hatchell, President N. C. Immigration Association.

Dear Sir—I should do injustice, both to myself and many others, if I failed to find some means of signifying the great gratification afforded me by the very general and intelligent interest in, and appreciation and furtherance of, my recent investigations on the part of the citizens of the Cape Fear region. I know of no better method of accomplishing that purpose than of constituting you the means and medium of communication. Not to mention others, I am under special obligations to Col. Cowan, Capt. Everett, Gen. McKee, and Col. Fremont, for the very essential aid furnished by these gentlemen in placing special trains on their respective roads at my disposal. In this way and in the very cordial manner I was everywhere received, I was able to accomplish much more in the line of my investigations among the marls and soils in the counties traversed by these railroads than would otherwise have been possible in the limited time which could be devoted to present to that purpose. So much public spirit and so just an appreciation of the direction in which lie the true interests of your people and of the best means of promoting them on the part of the gentlemen named, and so many others of your influential citizens, are full of promise to the rising agriculture of your region.

I am also particularly indebted to Dr. Baie, whose extensive and minute acquaintance with the marl deposits of the Cape Fear country and whose readiness to communicate information and to assist and accompany me were of essential service in facilitating my operations.

I confess my surprise after all that has been said and written on the subject, at the discovery of both the abundance and wide distribution of marls in your section. But it is a matter of still greater surprise that such *wines of wealth* should be so little known and appreciated, and used by the farmers. We must change all this. I count on your Farmers Clubs and Agricultural Societies, aided by an enlightened and comprehensive railroad policy, to do much in that direction.

I have collected largely and over a considerable area, both of soils and marls of which the samples are in ongoing analysis as fast as possible in the State Laboratory. The results will be given to the public at the earliest practicable moment.

It is my present purpose to return to these explorations in October, at the point where they were discontinued, and to extend them over the whole marl region of the State during the Fall and Winter.

I was very glad to receive a copy of your Address on the subject of Immigration. It contains many valuable suggestions. I agree with you fully in regard to the ownership and cultivation of too much land by almost all our farmers. It is one of the worst vices of our system and the most difficult to remove.

Yours, very truly,

W. C. KERR,
State Geologist.

DESTRUCTIVE FIRE—GREAT LOSS OF PROPERTY.

About 8 o'clock last evening the fire bell sounded an alarm. Soon the cause became evident, the burning of the extensive barrel factory of Messrs. Stranze & Rice, on Surry between Church and Castle streets, in the southern portion of the city. The buildings and material being exceedingly combustible the whole was soon enveloped in flames. The engines hurried to the spot, and the Fire King (No. 2) being near at hand was the first to arrive and play a stream upon the fire. The Steam Fire Engine came next and played the second stream upon the burning pile which it soon followed by a third. Other engines quickly followed. In a short time the brick building adjoining the barrel factory, belonging to Mr. Robt. Hemming and occupied by Mr. P. Graeff, who carries on a large coopering establishment, had caught and was finally destroyed notwithstanding the efforts to save it. A large quantity of staves near at hand were burned, but the majority of those stored in the yard were saved. Much other valuable property in the immediate vicinity was endangered—the Wilmington Gas Works and the steam saw mills of Messrs. Northrop & Cunningham and Maj. J. C. Mann.

The barrel factory of Messrs. Stranze & Rice was entirely consumed. Their loss is very heavy, being estimated at fully \$25,000. Upon the works and material was an insurance of \$5,000 in the Atlantic, of Baltimore, the Liverpool and London and Globe, the James River, of Virginia, and the Jefferson, of Virginia. Mr. Graeff had his stock, material and tools insured for \$2,000, in the Georgia Home Company which will barely cover the loss.

The loss of Mr. Hemming in the destruction of his building is about \$2,000, on which there was no insurance.

The origin of the fire is not definitely known. Messrs. Stranze & Rice are inclined to think it accidental, but there are reports of incendiarism. It is impossible, however, to tell definitely at this time.

Daily Journal 25th.

The language of nature and experience demonstrates that whoever would enjoy the pleasures of food, the beauties of landscape, the joys of companionship, the riches of literature, or the honors of station and renown, must preserve their health. The effect of food, injurious food, entering the stomach, is to derange the digestive organs and produce headache, loss of appetite, nervousness, sleep, low spirits, feverish humors, etc., which are the symptoms of that horrid disease, Dyspepsia, which assumes a thousand shapes, and points toward a miserable life and premature decay. Dyspepsia, however, will prevent, overcome and contract all of these evils. They act with increasing power, and are taken with the pleasure of a beverage.

MAGNOLIA WATER, Superior to the best imported German Cologne, and sold at half the price.

July 18. 218. Withdrew.

RATIFICATION MEETING—THE FRENCH EAGLES ABOUT CLIQUE.—Last night the meeting of the faction adhering to the "clique," as it is so frequently termed by the Price-Larkins party, to ratify the nomination of Eagles, was held in Thialian Hall. The building was pretty well crowded—a large number of our Democratic friends being present to see the "elephant."

But previous to this free exhibition, torchlight processions with a few transparencies and fewer torches moved up from the several wards. The inscriptions upon some of these banners were quite ingenious and equally offensive to no doubt to the parties concerned. Among these we noticed the announcement, "Steamer Bolter, Capt. Ah! Pea Barry—

tickets can be had on election day for a small price," and a steamer inscribed "Barry's Lysie," for Salt River direct, Capt. Ah! Pea Barry. And these, "Our Eagles take Rice," "Very small Rice" [printed on what appeared to be a rice cake], "Rice is barreled up," "He got his Price—so did Judas," "Little Rice brings a poor Price," "The Eagle Soars," "Duncan Roars." On one of the banners was a hit at Miller, a figure appearing in a bag on which was written, "A bag of wind," and above, "Mr. President, I rise to a Pint of Order," and beneath, "A Miller takes too much Rice." A caricature on Geo. R. French appeared in the form of a human head emerging from a large boot, represented as saying, "Solon I'm afraid my boots can't help you to Raleigh"—on the opposite side was written, "The Price of French boots is very low." On another banner was seen a grave and tombstone, on which was inscribed, "Here lies poor Larkins, who died August 5th, 1869, of eating too much Rice"; and still another contained a large carpet-bag, marked "Eagles, Raleigh, N. C.," crushing upon the backs of two figures, one of which was represented as saying, "Oh! George, take this awful load off me," and the other responding "I can't do it, Solon, it is too much for us."

But to the interior of the big free show. After the combined procession had exhibited itself somewhat around the streets, it marched up to the building with little unwashed negroes, prompted by the craven spirit and malignant hatred of some cowardly carpet baggers, singing "Hang Jeff Davis on a sour-apple tree." When once the crowd of actors and adherents were fully in the building, G. P. Bourke (colored) was made President, who introduced "New Hampshire's Third Senator" as the first speaker. With a calm air of assumed dignity this great hero and chief of carpet baggers marched forward, deposited about 47 pages of a written speech on the table, poured out a glass of water, and coolly faced the assemblage. He was powerful on challenging discussions from decent men, but we notice he forgot to challenge Mr. Sprague. On the 47 pages the biggest point contained was: "Mr. R. Eagles had been a first sergeant in the U. S. army, and he thought that any one who was a first sergeant would make a good Legislator"—[probably so, now that ability is much below par—but if this be so, what, then, as a natural consequence, was he said of a Brigadier General?] He said that Larkins' friends had been crying against a "damnable clique," as they called it; but he (the respectable hero of the carpet baggers) had never been able to find it [would he ever looked for it in G. Z. French's back room, among the old whiskey bottles?]

The 46th page of the Senator's speech was devoted to a written defense to carpet-baggers—and here he raised himself on tip-toe, and exercised the muscles of his arm, and shouted in valiant tones. He would temporize no further in the Republican party [did he ask any then?] and would ask no quarter [did he ask any then?]; but would mete out political death, and political damnation after death, to any man who will hereafter attack a Northern man as such. He wanted this foul distinction obliterated from the Republican party, and raised the war-cry then and there, which he would sound over every mountain and valley in the State—[and if he does we will have to get Sprague after him.] Just here as the valiant Senator was pronouncing himself clothed with all the dignity of an American citizen, the lights were all suddenly extinguished and darkness and confusion reigned. Uproar, noise and confusion was the consequence. Izard French, with his glasses rendering the darkness more appalling to his vision, flew around the stage like one mad, tore candles from the transparents and eagerly sought for lights. Bourke roared out—Abbot cried out for three cheers for Eagles—part of the crowd stamped—the drums beat and the horns tooted. Finally, by the light of a few dim flickering candles, the valiant Senator concluded his speech, but was unable again to refer to his notes.

It was ascertained that the sudden failure of the gas was due to the want of water in the meter, which was supplied and light obtained for Galloway to speak. His disgusting reflections upon the manner of his birth, and upon his father, and even the mother that bore him, are too familiar to those of our readers who too hear the "Indian Senator" talk to bear repetition here. Mabson followed Galloway, and others may have followed Mabson—but we had seen enough fun and closed our minutes of the free show right there.

From the Raleigh Standard.

SUPREME COURT.

In the Case of the University Railroad Company vs. W. W. Holden. Opinions by Chief Justice Pearson and Judges Steele and Dick. Bonds for building new Railroads declared unconstitutional.

Mandamus dismissed. Power of taxation discussed. Hold that the Constitution does not apply to the old debt, or to debts contracted in aid of uncompleted roads. No power to build new roads without submitting the question to the people. No limit to power of Counties to levy taxes for necessary expenses, designated in Art. 7, Sec. 2, provided they obtain special law of the General Assembly, and they need not be submitted to a vote of the people.

OPINION OF CHIEF JUSTICE PEARSON.

I incline to the opinion that the act entitled "An act to incorporate the University Railroad Company," does not have in law the effect to create a corporation. To give legal effect to a grant, there must be a grantor, a grantee, and a thing granted. Here we have a grantor, the General Assembly; a thing granted, corporate powers and franchises "to the same extent as are possessed by the North Carolina Railroad Company"; but there is no grantee—no person, persons, or body politic to whom the grant is made. If this be so, it would seem to follow that the directors who are to manage the affairs of said "University Railroad Company" (there being in contemplation of law no company) cannot have such rights as are enforced by the writ of mandamus.

11. In my opinion, by the proper construction of article 7, Sec. 6 of the Constitution, the General Assembly has no power to create a debt to build a new railroad, unless the subject be submitted to a vote of the people. It is decided (Galloway vs. Jenkins, 63 N. C., rep., 147) the General Assembly has no power to contract a debt, without a vote of the people, in the construction of a new railroad. If the General Assembly has no power to contract a debt for the purpose of building a new railroad, with the assistance of contributions by individuals, county subscriptions, and subscriptions by other railroads, it would seem it cannot have power to contract a debt for the purpose of making a new railroad out and out. A prohibition not to contract a lesser, surely amounts to a prohibition not to contract a greater debt for the same object. The evil which the Constitution seeks to prevent is not that of giving aid to individuals or corporations in the construction of railroads; but the evil is that of contracting new debts on the part of the State, the existing debt being almost too heavy to bear, and the credit of the State tottering under the load. A construction by which new debts may be contracted on a larger scale than one expressly prohibited, is not admissible upon any principle of law. As in this decision, in Galloway vs. Jenkins, in which the Court was divided, I will put my conclusion also on the construction of all the provisions of Art. 5.

III. The act under consideration is in violation of the Constitution in this: the tax levied by it disturbs the proportion fixed by the Constitution between taxation and the tax on the value of property, to-wit: "The tax on a poll shall be equal to the tax on three hundred dollars worth of property." Here we have the proportion. Then follows a provision: "The State and county tax combined shall never exceed two dollars on three hundred dollars worth of property; and the effect also is that if the tax on a poll is less than two dollars, then the tax on three hundred dollars worth of property must be less than two dollars. In other words, the tax on the poll is "the standard" by which the tax on property is to be levied.

Under two dollars, the power to levy a poll tax for State purposes is unlimited; this interest needed no protection, for it has full representation in the General Assembly.

Counties are protected by Sec. 7, which provides "taxes levied for county purposes shall be levied in like manner with the State taxes, and shall never exceed double of the State tax, except for a special purpose and with the special approval of the General Assembly."

Cities, towns and townships are protected, [Art. 7, Sec. 7,] which provides, "no debt shall be contracted, nor shall any tax be levied except for necessary expenses, unless by a vote of a majority of the qualified voters thereof."

The only remaining interest is that of property holders in respect to State and county taxes. This interest is protected by the equation fixed between taxation and tax on property. A statute which disturbs this equation breaks down the safeguard thrown around the public debt, and it can do so to the extent of one hundredth of one per cent, it may be done to the extent of one tenth, and there is no limit.

It was urged on the argument, this equation applies only to taxes levied for current expenses of the State and counties, and has no reference to taxation, needed to pay the interest of the public debt, or the tax to be levied to pay the interest of any new debt.

Ist. I agree that, if, under this equation, carried to its limit, the amount is not enough to meet current expenses, and also to pay the interest on the public debt, the excess needed is not only within the power, but it is the duty of the General Assembly to disregard the equation; for this protection to property must be taken to be subject to the injunction, "to maintain the honor and good faith of the State unimpaired, in respect to the public debt." [Art. 1, sec. 6.] and by sec. 4 of the article under consideration, it is ordained, "The General Assembly shall, by appropriate legislation and adequate taxation, provide for the payment of the interest on the public debt, and after 1880 it shall lay a special tax on a sinking fund, to discharge the principal." I do not adopt the entire position taken by Mr. Haywood, that a specific tax is meant a tax on land by the acre or on horses and cattle by the head. It is enough to admit that this tax is to be independent of the equation; as, for example, a tax for special county purposes, with the special approval of the General Assembly, may be levied without reference to the equation.

2. But I do not agree to the position that the tax required by sec. 5, to be levied to pay the interest on any new debt, is to be subject to the equation, and that the power to tax property in reference to new debts is unlimited, save by the discretion of the General Assembly. There is nothing, as we have seen in the case in regard to taxation to meet the interest and principal of the existing debt, to take the tax out of the equation. Its being called a special tax cannot have that effect; for section 8 requires that every act shall state the special object to which the tax is to be applied. On the contrary, it is included in the equation by every rule of construction.

This fixed equation between poll tax and property tax gives significance to the provision in the first clause, section 5, "no new debt shall be contracted in behalf of the State, unless in the same bill a special tax be levied to pay the interest annually."

If the purpose was simply to keep up the price of State bonds, this would not be to build a new debt, but to pay the old debt by a bill—but consider the purpose to be to restrain the power of taxation in regard to property, by reference to the equation before fixed, so that the special tax on property cannot be levied without making a corresponding increase in the capitation tax, and this provision amounts to a very important practical limitation on the power to tax property, and must have a very decided effect in checking a disposition to contract new debts.

And the exception in regard to "supplying a casual deficit," and for suppressing insurrection or invasion, in which cases the equation may be disregarded, speaks volumes, and shows that more was intended, in requiring a tax to be levied in the same bill, than simply to put the draftsman to the task of adding a clause to the bill. It is only in exigencies that this regard to property is not to be observed.

Except out of the operation of section 1 the taxation that may be "appropriate and adequate" to meet the interest and principal of the existing debt; except also out of its operation the taxation necessary to meet the interest and principal of such debt as shall be contracted by the State, or the State when the debt is to be contracted, and the effect will be to emasculate the section and fritter it away to nothing. Only current expenses are left for it to operate on; and these expenses may be met by the tax on trades, professions, franchises and incomes [see 3] which are not embraced by the equation. So by the construction contended for, this supposed protection to property holders is made void and illusory, and after all amounts to nothing.

On the argument, it was also argued: the bill levying this tax on property, to pay the interest of the debt to be contracted for the University R. R., was passed several days before the University R. R. was voted on, which time the capitation tax at 10¢ cents on the head, and the property tax at 35¢ cents on the \$100 worth, observing the equation of taxation; and if this

equation must be adhered to, the effect will be, either to nullify all of the taxation of the session, or to displace *pro tanto* a part of the tax on property in the revenue bill, in order to make room for the tax on the University bill "prior act in tempo," &c.

I do not concur in either of the conclusions. All of the bills, at the same session, are to be taken together. The revenue bill being in exact accordance with the Constitution, must take effect, and it is equally appropriate, the amount to be raised under it, to the annual expenses of the State government, and to the payment of the interest of the public debt. So the scope of the legislation is: If the General Assembly has power to lay a tax to pay the interest on the debt for the University R. R. without being limited by the equation, then the tax is to be levied. Otherwise it will fail as being levied *ultra vires*, and the General Assembly assumes an unlimited power of taxation.

Several cases were supposed in the argument, but they all involved the fallacy, that the General Assembly and County Commissioners have an independent power to tax property to the extent of 60¢ cents on the \$100 value, whereas, there is no such power, and the right to tax property depends on the capitation tax. Both must be exercised jointly, in order to preserve the equation of taxation, and then to tax.

Order in the court below reversed and mandamus dismissed.

PEARSON, C. J.

OPINION OF JUSTICE READE.

I agree with the Chief Justice, that no corporation is created by the act, and, therefore, the mandamus must be dismissed.

I do not agree with him, and my learned brethren, Roman and Dick, that the Legislature has no power to contract a debt to build a new railroad without a vote of the people; but I do agree that the Legislature has no power to give or lend its aid to others to build a new railroad without a vote of the people. In so far as the questions discussed in this case are involved in the case of Galloway vs. Jenkins, (63 N. C., rep., 147) I feel myself bound by that decision, although I did not concur in it. But I am wholly unable to comprehend how it follows that because the State cannot lend its aid to others to build a railroad for their benefit, that, therefore, the State cannot build a railroad out and out for its own benefit? If the Constitution forbade the Legislature to lend the aid of the State to New York to build a State House or Penitentiary for New York, would it be supposed that, therefore, the Legislature could not build a State House or Penitentiary out and out for North Carolina? Or would it be supposed that this view was answered by the argument that the greater includes the less, and if it cannot build a road with the aid of others, it cannot build one without such aid? It is said that the object of the Constitution is to prevent the State from contracting new debts, and yet it is admitted that it may contract new debts for other purposes than railroads. If the object was to keep the State from going in debt, why not keep it from going in debt for other purposes? If a former habeas corpus act required a bond to be given in three days, would it do any good to fence it on only two sides? But will you pursue the matter further? And I purposely refrain from approving or disapproving the internal improvement policy, because it is not a Judge's province to do so. I only seek to expound what has been done by the Constitution and by the Legislature. If the law-makers have erred in matters of policy, the remedy is with the people.

My construction of the taxing power of the Legislature under the Constitution is as follows:

1. The first object of the Convention in the Art. 5 of the Constitution was to provide for the ordinary and current expenses of the government. That is done in sections 1, 2 and 3. And for that purpose the tax is limited to 32¢ on the poll, and the same amount on \$300 worth of property, and equum must be observed. This was thought to be sufficient to pay the ordinary and economical administration of the government.

2. We had a considerable public debt, and, after providing for current expenses, the next consideration was, how is the public debt to be met? And the 4th section provides that a specific tax shall be laid for that.
3. In regard to the construction of the first four sections I do not understand that there is any difference of opinion among the Judges, except it may be as to what constitutes "the public debt." The subject of section 5 except incidentally. Having provided in sections 1, 2 and 3 for ordinary expenses, and in section 4 for the public debt, the next consideration was to provide for extraordinary occasions. And for such occasions the 5th section was introduced. From the very nature of the case it must be so. If an extraordinary and unforeseen occasion is to be met, how is it possible to limit the means unless you foreknow the occasion? If there be an insurrection, bonds must be issued to meet it; but whether a large or small insurrection, must depend on whether it be a large or small insurrection, and so with any other occasion. It ought not to be supposed, that a Constitution would be framed with such limitations upon the taxing power of the State, that the vessel of State will sail safely in fair weather, but that it will be wrecked in storm. We may well impute it to wisdom to provide, that ordinarily there shall be light taxes and economy in expenditures, but when any extraordinary necessity arises the whole power of the State must be unloosed to meet it. It is admitted that the States, for such occasions, may and with the approval of the Legislature, may under section 7, levy a tax without limit and without a vote of the people. It was supposed that extraordinary necessities may fall upon a county, and may not extraordinary necessities fall upon the State? It cannot be inferred that either county or State taxes will be excessive, because the counties and Legislature have the power in extraordinary cases to make them.

4. Until the new Constitution there was no restriction whatever upon the power of the Legislature to tax; and yet the taxes were never excessive. The taxes were supposed to be a sufficient check upon the accountability of the representative to his constituents. The restriction in our new Constitution is deemed a wise one—indeed, probably, by the new order of things, and intended to protect the non-property holder from an oppressive poll tax, and the property holder from an equal property tax, for the ordinary purposes of the government.

I admit that the Legislature cannot give or lend anything to railroads which belong to others, without a vote of the people; but if any extraordinary occasion or necessity arises the Legislature may do any thing the State when the occasion may require—may issue bonds at par without limit, and without tax, and issue them below par with a special tax. For any abuse of this power the representative is responsible to the people. All that the court can say, is, this it is written in the Constitution.

OPINION OF JUSTICE DICK.

The important questions which are in-

olved in this case were fully discussed by counsel at the bar, and they have been maturely considered by the court. I concur with the other Justices in believing that the act incorporating the University R. R. Co. is unconstitutional, and the reasons for such opinion are fully stated by Chief Justice Pearson and Justice Roman. The difference of opinion upon the Legislative power of taxation, has caused delay in the decision of this case. I think it proper to state the conclusions to which I have arrived, without attempting any elaborate argument on the subject.

The power of taxation is one of the chief attributes of sovereignty, and no constitutional government can exist without it. In Republican government the usual safeguard against the abuse of this power, is the responsibility of the Legislature to the constituents. Until the formation of our present government no other safe-guard against unjust and oppressive taxation was placed in the Constitution of this State. When the Convention of 1868 met to remodel our State government, and to propose to impose some constitutional restriction upon the Legislature in relation to the exercise of this power.

We must suppose that the framers of our government did not intend by these restrictions to limit the Legislature in such a manner as to prevent it from sending policy to the honor and credit of the State, and to the exigencies of the government, and advancing the best interests of the people. We ought to consider the circumstances by which the Convention was surrounded and construe these restrictions with due liberality. It is true that the Convention in framing that part of the Constitution which relates to taxation had several objects in view.

The first object was to secure the honor and credit of the State. There was a large State debt which had been incurred in developing the resources of the State; and not only common knowledge, but the required that it should be secured, and the accruing interest promptly paid. For the purpose of gaining public confidence, the solemn assurance was placed in the Declaration of Rights (Art. 1, Sec. 6) that the State debt should be paid, and that it should never be questioned, and that to meet this obligation the imperative duty was imposed upon the General Assembly to make provision for its payment "by appropriate legislation and adequate taxation." (Art. 5, Sec. 4.) Upon a question in which the honor and credit of the State are involved, we cannot believe that any restrictions are placed upon the Legislature which would in any manner prevent it from promptly performing an imperative duty.

The object of the Convention in Art. 5, Sec. 1, was to provide a system of general taxation for the ordinary expenses of the government, which is to operate with a just equality upon the citizens and property of the country. The capitation tax is limited to two dollars on the head, and for the purposes of general taxation the tax on real estate is limited to 35¢ cents on the \$100 value of property, and cannot exceed that amount. Sections 1, 2 and 3 establish a general revenue system for the State; and sections 4 and 5 provide special taxes for State indebtedness, unexpected exigencies, and for the completion of unfinished railroads. The object of section 4 was to place a restriction upon the increase of the public debt until the bonds of the State shall be at par. This restriction cannot, under any circumstances, extend to a debt incurred for a casual deficit, or for suppressing insurrection or invasion; and when the bonds of the State are at par, the restriction ceases as to all new debts in behalf of the State.

The restriction in this section requires the Legislature to provide for the payment of the interest of any new debt incurred by a special tax. As to this the Legislature became directly accountable to the constituents, and this is a most important security against improper legislation in a republican government where elections are free and frequent. This section does not regulate taxation, but provides the manner in which new debts are to be incurred for the general welfare of the people. The object of section 5 was to contemplate the necessity of incurring new debts, outside of the ordinary expenses of the government; and if the State credit had been placed on no restriction would have been placed on the Legislature in this respect. The debt to be thus incurred is to be "in behalf of the State, and for the benefit of all citizens, and not for any special locality or section.

When the State can get par value for its bonds, and expend the money for the equal benefit of all its citizens, then there can be no injury or danger to the people for such purpose. The debt is incurred by all for the benefit of all. The special tax mentioned in this section must be adequate for the purposes intended and cannot be regulated or restricted by section 1.

The manifest purpose of the Convention was to provide for the completion, as soon as practicable, of the Railroad system which had been commenced in the State—and the only restriction laid on the Legislature in issuing bonds for such purpose is, that a special tax be laid on the income, while the bonds are under par.

In my opinion no new Railroad can be built with State aid, unless the subject is submitted to a vote of the people, &c.—(Art. 5, Sec. 5.)

It was intended that the special taxes mentioned in sections 4 and 5, and restricted by the equation, established in section 1—then we must believe that the Convention either greatly over-estimated the sources of taxation, or was not honest in its solemn pledge,